

REMARKS/ARGUMENTS

Claims 1-14 stand rejected in the outstanding Official Action. Claim 1 has been amended and therefore claims 1-14 remain in this application.

The Examiner's consideration of the previously submitted prior art in Applicants' Information Disclosure Statement is very much appreciated. Additionally, the Examiner's confirmation of receipt of the priority claim and the certified copy of the priority document is very much appreciated.

Claims 1-7 and 12-14 stand rejected under 35 USC §102 as being anticipated by Hassard (U.S. Patent 6,568,181). The Court of Appeals for the Federal Circuit has noted in the case of *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 USPQ 481, 485 (Fed. Cir. 1984) that "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." Thus, in order to establish a case of anticipation, the Examiner must show where the prior art reference teaches each and every claim limitation.

A detailed review of the Hassard disclosure indicates that in every embodiment but one, Hassard endeavors to avoid having air introduced into the flow system, i.e., he specifically teaches away from any gas entrainment in the liquid flow field, and instead teaches liquid entrainment into the fluid flow liquid.

The use of air as a transmission fluid (instead of water) when attempting to generate power with an underwater fluid flow is the goal of the subject matter shown in Figure 8 and is discussed at column 7, lines 21-44 of the Hassard reference. Note that the rationale for using air in this embodiment (the only embodiment in which air is used as a transmission fluid) is to

reduce "viscous losses caused by fluid flow between the turbine 40 and the underwater structure." (Column 7, lines 42-44). The Figure 8 embodiment (the only embodiment to utilize air in the Hassard system) does not entrain bubbles of air in the fluid flow of a liquid.

Applicants' original claim 1 specified "the transmission fluid being a gas and the fluid flow being a liquid." The Hassard reference admits in the discussion of Figure 8 that the other arrangements (all arrangements other than Figure 8) utilize water as the transmission fluid and also as the fluid flow ("this arrangement [Figure 8] means that instead of water flowing between the turbine 40 and underwater fluid flow, air flows for some of this distance."). Thus, in the other embodiments, the transmission fluid is water and the fluid flow is water, thereby clearly avoiding Applicants' claims which specify that "the transmission fluid being a gas and the fluid flow being a liquid."

Additionally, Applicants' original claim 1 specifies the arrangement "causing the transmission fluid to be drawn through the conduit exiting the conduit via a plurality of entrainment outlets **to become entrained in the fluid flow.**" (Emphasis added). At no point does Hassard teach that a gaseous transmission fluid is "to become entrained in the fluid flow" of water.

The Examiner, on page 3, line 5 of the Official Action, appears to be suggesting that "end portion of 20s see Fig. 4" is evidence of entrainment outlets allowing the gaseous transmission fluid "to become entrained in the fluid flow." Figure 4 is an end view of three side-by-side structures illustrated in side view in Figure 3. In discussion of Figure 3 (and the structure shown in Figure 4), Hassard specifically states that pipe 30 conveys water and is connected "to a turbine 40 and then passes back into the sea." (Column 4, lines 59-60). Thus, it is only water circulating

in pipe 30 which is taught by the Hassard reference. This, at best, teaches that the transmission fluid, being water, is later entrained in the fluid flow also comprising water. Hassard specifically **teaches away from the entrainment of a gas in a liquid fluid flow.**

Should the Examiner believe any portion of the Hassard reference teaches entrainment of a gas in a liquid, he is respectfully requested to identify that portion. Absent such identification, it is clear that the subject matter of claims 1-7 and 12-14 is not anticipated by the Hassard reference.

Claims 8-11 stand rejected under 35 USC §103 as unpatentable over Hassard in view of Miller (U.S. Patent 5,071,548). Inasmuch as claims 8-11 ultimately depend from claim 1, the above comments distinguishing claim 1 from the Hassard reference are herein incorporated by reference. The Examiner does not allege that the Miller reference teaches any structure causing entrainment of a gas in a liquid fluid flow. As noted above, this is clearly to be avoided as per the Hassard reference. Accordingly, neither Hassard nor Miller teach the subject matter of Applicants' independent claim 1, from which claims 8-11 depend. Accordingly, the Hassard/Miller combination does not support any rejection of claims 8-11 and any further rejection thereunder is respectfully traversed.

Moreover, the Examiner has not provided any reason or motivation for combining the Hassard and Miller references. He has simply failed to set out a *prima facie* case of obviousness under 35 USC §103 and any further rejection thereunder is respectfully traversed.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-14 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or

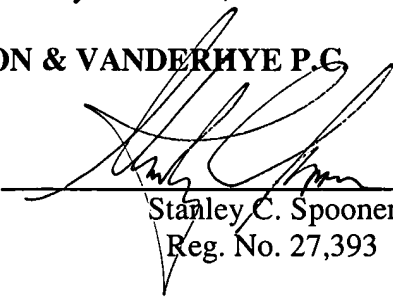
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personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

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